

Legislative Analysis



ALLOW RENEWABLE ENERGY SYSTEMS AS PERMITTED USE OF PROTECTED FARMLAND

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House Bill 4887

Sponsor: Rep. Jeff Mayes

Committee: Energy & Technology

Complete to 5-27-09

A SUMMARY OF HOUSE BILL 4887 AS INTRODUCED 5-5-09

The bill would amend Part 361 (Farmland and Open Space Preservation) of the Natural Resources and Environmental Protection Act to allow a variety of renewable energy systems (such as biomass, wind, solar, geothermal, landfill gas, and other systems that generate electricity) to qualify as a "permitted use" of farmland covered by an easement or agreement designed to preserve it as farmland or open space.

Permitted uses. In general, the bill would amend the definition of "permitted use." That term appears throughout Part 361, including in the definitions of "agricultural conservation easement," "development rights," "development rights agreement," and "development rights easement."

Currently, a "permitted use" is defined as:

"...any use expressly authorized within a development rights agreement, development rights easement, or agriculture conservation easement that is consistent with the farming operation or that does not alter the open space character of the land. Storage, retail or wholesale marketing, or processing of agricultural products is a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products are produced by the farm operator for at least 3 of the immediately preceding 5 years. The state land use agency shall determine whether a use is a permitted use pursuant to section 36104a." MCL 324.36101(l)

Under the bill, a "permitted use" under Section 36101(l) would mean *any of the following*:

- Any use expressly authorized within a development rights agreement development rights easement, or agriculture conservation easement that is consistent with the farming operation or that does not alter the open space character of the land, ***as determined by the state land use agency [Department of Agriculture] under Section 36104a.***
- Storage, retail, or wholesale marketing, or processing of agricultural products in a farming operation if more than 50 percent of the stored, processed, or marketed products are produced by the farm operator for at least three of the preceding five years.

- ***At a farm operation, a renewable energy system*** [as defined in the Section 11 of the Clean, Renewable, and Efficient Energy Act, except for an incinerator].

Definition of renewable energy system; incinerator exclusion. As noted above, the bill would allow any "renewable energy system" as defined in Section 11 of the Clean, Renewable, and Efficient Energy Act, except for an incinerator, as a permitted use of farmland under Part 362. Under Section 11 of the Clean, Renewable, and Efficient Energy Act, the term "**renewable energy system**" means a facility, electricity generation system, or set of electricity generation systems that use one or more renewable energy resources to generate electricity."

A "**renewable energy resource**" under Section 11 means "a resource that naturally replenishes over a human, not a geological, time frame and that is ultimately derived from solar power, water power, or wind power. Renewable energy resource does not include petroleum, nuclear, natural gas, or coal. A renewable energy resource comes from the sun or from thermal inertia of the earth and minimizes the output of toxic material in the conversion of the energy": and includes, but is not limited to, all of the following:

- Biomass.
- Solar and solar thermal energy.
- Wind energy.
- Kinetic energy of moving water.
- Geothermal energy.
- Municipal solid waste.
- Landfill gas produced by municipal solid waste.

In other words, any system that generated electricity from one or more of these resources and that otherwise qualified as a renewable energy system under Section 11 could be placed on protected farmland, except for an incinerator.

Role of state land use agency in deciding permitted use questions. Under current law, the state land agency [Department of Agriculture] has the authority to determine whether a use is a permitted use under Section 36104a. The bill, however, would appear to limit the department's authority only to land use decisions under the first subsection of Section 36101(l) (described in the first bullet point under "Permitted uses," earlier in the summary).

MCL 324.36101 & 36104a

FISCAL IMPACT:

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.